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Message Text

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ACTION DLOS-09

INFO OCT-01 OIC-02 ISO-00 AF-10 ARA-14 EA-12 EUR-12
NEA-10 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-04
SOE-02 DOE-15 FMC-02 TRSE-00 H-02 INR-10 INT-05
IO-14 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02 OES-07
OMB-01 PA-02 PM-05 SP-02 SS-15 ICA-20 /213 W
----------067901 271044Z /10

P 271022Z APR 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 8907
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
USIS/USEC BRUSSELS
AMEMBASSY COPENHAGEN
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY THE HAGUE

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E.O. 11652: N/A
TAGS: PLOS
SUBJECT: LOS - FURTHER STATEMENT BY CHAIRMAN OF DANISH DELEGATION ON BEHALF OF THE EC NINE ON TRANSFER OF TECHNOLOGY

1. THERE FOLLOWS THE TEXT OF EXPLANATORY REMARKS MADE BY THE CHAIRMAN OF THE DANISH DELEGATION AMBASSADOR VILLADSEN ON APRIL 18 ON BEHALF OF THE EC NINE ON THE ISSUE OF TRANSFER OF TECHNOLOGY.

2. BEGIN TEXT:
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MR. CHAIRMAN,

(1). WE HAVE HAD AN INTERESTING AND IT SEEMS TO ME ENCOURAGING DEBATE ON THE SYSTEM OF EXPLORATION AND EXPLOITATION AND THE RELATED ISSUE OF TRANSFER OF TECHNOLOGY. DURING THE DISCUSSION A NUMBER OF QUESTIONS

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HAVE BEEN PUT FORWARD IN ORDER TO CLARIFY SOME OF THE POINTS IN THE STATEMENT I MADE ON APRIL 14 ON BEHALF OF THE NINE MEMBERS OF THE EEC. SOME OF THEM HAVE ALREADY BEEN ANSWERED IN STATEMENTS BY THE DISTINQUISHED DELEGATES OF ITALY AND FRG. I SHALL NOW - AND AGAIN SPEAKING ON BEHALF OF THE NINE COUNTRIES - TRY TO TAKE UP SOME OF THE OTHER QUESTIONS AND SUPPLEMENT THE ANSWERS ALREADY GIVEN.
(2). WE HAVE BEEN ASKED TO EXPLAIN MORE EXTENSIVELY THE CHARACTERISTICS OF THE PARALLEL SYSTEM, WHICH WE CONSIDER TO BE THE REASONABLE OUTCOME OF OUR NEGOTIATIONS. WE AGREE WITH OTHER SPEAKERS THAT THESE CHARACTERISTICS ARE EMBODIED IN THE DETAILED PROVISIONS OF ANNEX II, FOR WHICH ARTICLE 151 GIVES THE GENERAL FRAMEWORK. THE PARALLEL SYSTEM IS A REGIME UNDER WHICH BOTH THE ENTERPRISE AND STATES AND THEIR COMPANIES UNDER THE AUTHORITY'S OVERALL SUPERVISION WILL HAVE ASSURED AND NON-DISCRIMINATORY ACCESS TO ACTIVITIES IN THE AREA. THIS MEANS, INTER ALIA, THAT THE ENTERPRISE MUST BE PLACED FINANCIALLY AND TECHNOLOGIC-ALLY IN SUCH A POSITION THAT IT WILL BE ON AN EQUAL FOOT-ING WITH STATES AND ENTERPRISES WITH REGARD TO ACTIVITIES IN THE AREA AND ASSURED ACCESS TO THE RESOURCES.

(3). WHEN WE HAVE SAID THAT ARTICLE 151 IN ITS PRESENT FORM DOES NOT ACCURATELY REFLECT THE PARALLEL SYSTEM SO DESCRIBED, IT IS PRECISELY FOR THE REASONS EXPLAINED YESTERDAY BY THE DISTINGUISHED DELEGATES OF THE UNITED
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STATES. IT IS JUST NOT CORRECT TO STATE IN PARA 1 - IF IN FACT A PARALLEL SYSTEM IS REFERRED TO - THAT THE ACTIV-ITIES SHALL BE CARRIED OUT BY THE AUTHORITY, AND THE REF-ERENCES IN PARA 2 AND 3 TO ACTIVITIES CARRIED OUT ON BE-HALF OF THE AUTHORITY MIGHT IMPLY AN AGENCY RELATIONSHIP WHICH WE CANNOT SUBSCRIBE TO.

IN A DRAFTING STAGE A BETTER WORDING CAN UNDOUBTEDLY BE FOUND IF A SIMPLE DELETION OF THESE TERMS IS NOT SATIS-FACTORY.

(4). THE PARALLEL SYSTEM IMPLIES - AS I HAVE STATED-THAT THE ENTERPRISE MUST BE TECHNOLOGICALLY VIABLE, AND IT IS EXACTLY THE PROBLEM OF HOW TO MAKE TRUE THIS COMMITMENT WE ARE FINALLY COMING TO GRIPS WITH. THE EEC COUNTRIES HAVE MADE A PROPOSAL WHICH IN OUR VIEW CONTAINS THE NEC-ESSARY ELEMENTS FOR A SOLUTION OF THIS ASPECT OF THE PRO-BLEM. IT ENVISAGES THAT EACH APPLICANT SHALL UNDERTAKE TO MAKE AVAILABLE TO THE ENTERPRISE A GENERAL DESCRIPTION OF THE EQUIPMENT AND METHODS HE INTENDS TO USE. FURTHER-MORE, HE SHALL UNDERTAKE TO NEGOTIATE ARRANGEMENTS UNDER WHICH TECHNOLOGY HE HAS A RIGHT TO TRANSFER IS MADE AVAIL-

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ABLE AND TO FACILITATE TO THE GREATEST EXTENT POSSIBLE
THE ACQUISITION BY THE ENTERPRISE OF TECHNOLOGY WHICH HE
DOES NOT OWN HIMSELF. THESE OBLIGATIONS MIGHT BE INCOR-
PORATED IN A CLAUSE IN THE EXPLORATION AND EXPLOITATION
CONTRACT REFERRED TO IN ARTICLE 151 PARA 3 BUT NOT NEC-
ESSARILY SO, BECAUSE THE OBLIGATIONS WOULD FOLLOW ALREADY
BY THE STIPULATION IN ANNEX II (PARA 4 C 2). AN APPLICANT
WOULD SIMPLY NOT BE QUALIFIED IF HE DOES NOT ANSWER TO
THESE OBLIGATIONS.

(5). IF THE ENTERPRISE ON THE BASIS OF THE INFORMATION
RECEIVED FINDS ITSELF INTERESTED IN THE TECHNOLOGY TO BE
USED BY THE CONTRACTOR, IT MAY REQUEST NEGOTIATIONS ON

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ARRANGEMENTS FOR ITS TRANSFER. THIS, IN ADDITION TO BUY-
ING EQUIPMENT AND KNOW-HOW, MAY INCLUDE ARRANGEMENTS FOR
TRAINING OF PERSONNEL. IT COULD BE STIPULATED IN ANNEX II
THAT EACH PROSPECTOR AND CONTRACTOR SHALL TO THE EXTENT
PRACTICABLE CONTRIBUTE TO THE PROGRAMME AND MEASURES

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REFERRED TO IN ARTICLE 144 B AND CONSULT WITH THE AUTHOR-
ITY ON WAYS AND MEANS TO GIVE EFFECT TO HIS OBLIGATIONS IN
THIS RESPECT.

(6). THE NEGOTIATIONS IN QUESTION WILL, OF COURSE, ALSO
DEAL WITH THE TERMS AND CONDITIONS FOR THE TRANSFER IN-
CLUDING THE PRICES. EVERYONE IS IN AGREEMENT THAT WE ARE
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NOT TALKING ABOUT DONATIONS. WE TALK ABOUT TRANSFER ON
COMMERCIAL TERMS AND CONDITIONS, AND BY THIS WE DO NOT,
OF COURSE, MEAN UNFAIR OR UNREASONABLE PRICES. WE AIM AT
MUTUALLY AGREED TERMS AND CONDITIONS, AND WE THINK THAT
IT WILL ALWAYS BE POSSIBLE TO REACH AN UNDERSTANDING OF
A FAIR PRICE BASED ON INVESTMENTS, DEVELOPMENT COSTS,
PROFIT MARGIN, ETC.

(7). THE NEGOTIATIONS SHOULD BE CONDUCTED IN GOOD FAITH.
THIS IMPLIES, INTER ALIA, THAT IF A CONTRACTOR COMPLETELY
REFUSES TO SHARE HIS TECHNOLOGY WITH THE ENTERPRISE ON
REASONABLE COMMERCIAL TERMS, HE IS NOT ACTING IN GOOD
FAITH. IT ALSO GOES WITHOUT SAYING THAT IF A CONTRACTOR
TRIES TO EVADE HIS OBLIGATIONS TO NEGOTIATE ARRANGEMENTS
REGARDING TECHNOLOGY WHICH HE HIMSELF OWNS BY TRANSFERRING
THE TECHNOLOGY, TO ANOTHER COMPANY UNDER LICENSE OR IF HE
IN OTHER WAYS TRIES TO ABUSE THE SYSTEM, THIS WILL ALSO
BE DEEMED TO BE ACTING IN BAD FAITH.

(8). THE CONCILIATION PROCEDURE WHICH WE ENVISAGE, IF THE
NEGOTIATIONS ARE NOT CONCLUDED WITHIN A REASONABLE TIME -
AND I STRESS THE TIME LIMITS BUILT INTO OUR PROPOSAL - IS
INTENDED TO ASSIST THE PARTIES IN REACHING AGREEMENT. WE
FEEL THAT THIS PROCEDURE IS WELL SUITED TO FURTHER THIS
END.

(9). LET ME AT LAST, MR. CHAIRMAN, ADD A FEW WORDS ON THE
QUESTION OF THE STRUCTURE OF ART. 151. WE HAVE SUGGESTED
THAT PARA 7, 8 AND 9 BE CONSIDERED TOGETHER WITH THE MAIN
PROVISIONS ON THESE MATTERS, AND WE WOULD PREFER TO SEE
PARA 7 ATTACHED TO ARTICLE 142 AND PARA 8 TO ARTICLE 144
IN SECTION 3, THE HEADING OF WHICH SHOULD BE CHANGED TO:
"CONDUCT IN THE AREA". OTHER SUGGESTIONS HAVE BEEN MADE
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REGARDING THE STRUCTURE, AND WE ARE OPEN FOR DISCUSSION
OF SUCH IDEAS. IT SHOULD, HOWEVER, BE UNDERSTOOD, THAT

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WE DO NOT REGARD THE PRESENT WORDING OF PARA 7 AND PARA 9 AS ACCEPTABLE. WE HAVE HERE THE SAME VIEWPOINTS AS EXPRESSED YESTERDAY BY THE DISTINGUISHED DELEGATE TO THE UNITED STATES.

(10). I HAVE, MR. CHAIRMAN, NOW EXPANDED ON THE STATEMENT I MADE ON FRIDAY, AND I HOPE THAT I TOGETHER WITH OTHER SPEAKERS HAVE ANSWERED MOST OF THE QUERIES RAISED UNDER OUR DEBATE SO FAR.

THANK YOU, MR. CHAIRMAN.

END TEXT. RICHARDSON

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